

# STATE OF ILLINOIS

## DEPARTMENT OF INSURANCE



IN THE MATTER OF THE  
REVOCATION OF LICENSING  
AUTHORITY OF:

KEVIN B. DERMODY  
510 CLEARWATER LANE  
OSWEGO, ILLINOIS 60543

### ORDER OF REVOCATION

I, J. Anthony Clark, Director of Insurance of the State of Illinois, hereby revoke the license of Kevin B. Dermody (Licensee) to take effect 30 days from the date of mailing of this Order pursuant to Section 500-70 of the Illinois Insurance Code (215 ILCS 5/500-70).

Based upon an investigation and review of the Licensee by the Producer Section of the Illinois Department of Insurance, the Department alleges that:

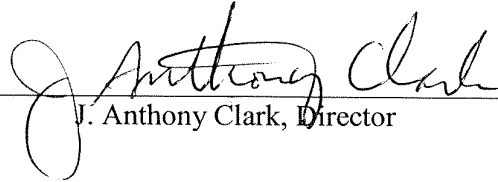
On December 2, 2002, the Illinois Secretary of State Securities Department issued a Consent Order of Revocation (Exhibit A attached) ordering the Licensee's registration as a salesperson and as an investment advisor in the State of Illinois to be revoked.

Therefore, the Licensee has demonstrated incompetence, untrustworthiness and financial irresponsibility in the conduct of business in this State and elsewhere which are grounds for revocation pursuant to Section 500-70(a)(8) of the Illinois Insurance Code (215 ILCS 5/500-70(a)(8)).

This Order of Revocation shall take effect 30 days from the date of mailing but shall be stayed if within the 30-day period a written request for hearing is filed with the Director. Any correspondence concerning this Order of Revocation shall be addressed to the Department of Insurance, Producer Section, 320 West Washington Street, Springfield, Illinois 62767-0001.

50 Ill. Adm. Code 2402 governs hearings before the Department of Insurance. Section 408(5)(a) of the Illinois Insurance Code (215 ILCS 5/408) and 50 Ill. Adm. Code 2402.270(d) provide that the costs of a hearing may be assessed against the parties.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Official Seal of the Department of Insurance in the City of Springfield, State of Illinois, this 6<sup>th</sup> day of November, A.D., 2003.

  
J. Anthony Clark, Director

TEA:cb543

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"><li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li><li>■ Print your name and address on the reverse so that we can return the card to you.</li><li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li></ul>		<p>A. Signature <input checked="" type="checkbox"/> <u>Colleen Dermody</u> <input type="checkbox"/> Agent <input type="checkbox"/> Address</p> <p>B. Received by (Printed Name) <u>11/21/03</u></p> <p>C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
1. Article Addressed to: <u>Kevin B. Dermody</u> <u>510 Clearwater Lane</u> <u>Oswego, IL 60543</u>		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
2. Article Number (Transfer from service)		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
		7003 1680 0007 5733 6868	

PS Form 3811, August 2001 Domestic Return Receipt 02595-02-M-1

STATE OF ILLINOIS  
SECRETARY OF STATE  
SECURITIES DEPARTMENT

\_\_\_\_\_  
IN THE MATTER OF: KEVIN B. DERMODY  
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)  
)  
FILE NO. 0200612

CONSENT ORDER OF REVOCATION

TO THE RESPONDENT:

Kevin B. Dermody  
(CRD #2274661)  
620 E. Prairie Avenue  
Naperville, Illinois 60540

C/o Rory K. McGinty  
Law Offices of Rory K. McGinty, P.C.  
5202 Washington  
Suite 5  
Downers Grove, Illinois 60515

WHEREAS, Respondent on the 29<sup>th</sup> day of November, 2002 executed a certain Stipulation to Enter Consent Order of Revocation (the "Stipulation"), which hereby is incorporated by reference herein.

WHEREAS, by means of the Stipulation, Respondent has admitted to the jurisdiction of the Secretary of State and service of the Notice of Hearing of the Secretary of State, Securities Department, dated September 6, 2002, in this proceeding (the "Notice") and Respondent has consented to the entry of this Consent Order of Revocation ("Consent Order").

WHEREAS, by means of this Stipulation, the Respondent acknowledged, while neither admitting nor denying the truth thereof, that the following allegations contained in the Notice of Hearing shall be adopted as the Secretary of State's Findings of Fact:

1. That at all relevant times, the Respondent was registered with the Secretary of State as a salesperson in the State of Illinois pursuant to Section 8 of the Act until June 28, 2001 and as an investment advisor representative in the State of Illinois pursuant to Section 8 of the Act until July 9, 2001.

EXHIBIT "A"

Consent Order of Revocation

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2. That on April 10, 2002 the National Association of Securities Dealers Regulations, Inc. (NASDR) entered Order of Acceptance of Offer of Settlement ("Order") submitted by the Respondent regarding Case No. C05020001 which barred him from association with any member of the Association in any capacity.
3. That the Order re-alleged the following facts:
  - a. The Respondent entered the securities industry in December 1992 as an Investment Company and Variable Contracts Representative of MONY Securities Corporation, a member of this Association. He voluntarily terminated his affiliation with MONY Securities Corporation on March 10, 1997, and became associated with Tower Square Securities, Inc., a member of this Association, on March 11, 1997.
  - b. During the Respondent's association with Tower Square Securities, Inc., he was registered with the Association under Article V of the By-Laws as a General Securities Representative and an Investment Company and Variable Contracts Products representative.
  - c. Tower Square Securities, Inc., electronically filed a Uniform Termination Notice for Securities Industry Registration ("Form U-5") for the Respondent on June 28, 2001. Although he is not currently associated with a member firm, he remains subject to the jurisdiction of the Association, pursuant to Article V, Section 4 of the Association's By-Laws, which provides for a two-year period of retained Jurisdiction over formerly registered persons.
  - d. JPPSS, a public school system, operated a deferred compensation plan for its employees under Section 457(g) of the Internal Revenue Code (the "Plan"). Prior to July 2000, the Plan was funded with variable annuities, and participants were allowed to direct their individual deferred compensation amounts into one or more investment portfolios or sub-accounts within the annuities.
  - e. On or about July 26, 2000, the Respondent entered into a contract with JPPSS under which he was to serve as investment manager of the plan with discretion to manage the affairs of the Plan and direct the actions of its trustee. He represented to the Board of JPPSS and to the Plan participants that he would liquidate variable annuities then held by the Plan and invest Plan funds in mutual funds and certain other investments that would "mirror" the performance of mutual funds selections made by individual Plan participants.

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- f. The Respondent further represented that his investment expertise would result in the growth of total Plan assets in excess of the total value of mutual fund selections made by individual participants. He further represented that any such excess would offset surrender charges incurred by the Plan in connection with the liquidation of its present holdings of variable annuities; and, in the event that the excess would not be generated through his investment expertise, he would make up the amount from \$25 million in unencumbered cash and securities he claimed to own or control.
- g. Acting on the Respondent's recommendation, the Plan liquidated its holdings of approximately \$10.6 million in variable annuities in August 2000, incurring surrender charges exceeding \$676,000. The Proceeds of the annuity liquidation, plus deferred compensation amounts received on subsequent payroll dates, were used by the Respondent to purchase insurance contracts and securities including:
  - i) a corporate-owned variable life insurance contract with a premium amount of approximately \$3.5 million,
  - ii) other fixed life insurance contracts with initial premiums in the amount of approximately \$1.4 million,
  - iii) mutual funds in the amount of approximately \$2.5 million, and
  - iv) unregistered securities issued by Hilltopper Enterprises, L.L.C. ("Hilltopper") in the amount of approximately \$3.45 million.
- h. The Respondent was an owner and manager of Hilltopper, and the majority of Plan funds invested with Hilltopper were lost through speculative trading in options on exchange-traded funds and technology stocks. The amount of Plan funds invested by the Respondent totaled approximately \$11.3 million.
- i. An independent audit of the Plan as of June 30, 2001 reflected that the value of Plan assets had decreased to approximately \$6.5 million, while total liabilities to Plan participants were approximately 10.7 million.
- j. Demands made against the Respondent by the Board of JPPSS to compensate the Plan for losses have been unanswered.

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Commissions earned by the Respondent on insurance and securities he sold to the Plan were approximately \$756,000.

4. That the Order found:

In violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder, and NASD Conduct Rules 2110 and 2120, by means of instrumentalities of interstate commerce and the mails, during the period from on or about May 24, 2000, through on or about May 17, 2001, the Respondent engaged in a scheme to defraud, made untrue statements of material fact, omitted to state material facts and engaged in a course of business that operated as a fraud or deceit in connection with the purchase and sale of securities. Specifically, he made false and misleading statements to the Board of JPPSS and to Plan participants, and omitted to state material facts, in order to induce them to liquidate the securities holdings of the Plan and transfer funds to his control, which funds he used to purchase securities. Such false and misleading statements, and omissions, included the following:

- a. He omitted to disclose to the Board and the Plan participants that he had an ownership interest in Hilltopper Enterprise, L.L.C. prior to purchasing unregistered securities issued by that entity for the Plan's account in the amounts of \$2,000,000 ("Security No.1") and \$1,000,000 ("Security No.2") on or about August 25, 2000. He invested an additional \$450,000 of Plan funds in Security No.1 on or about January 10, 2001. He concealed the identity of the Hilltopper securities by causing to be posted, on the Plan's website, in the first quarter of 2001, a statement of assets in which the Hilltopper securities were falsely identified as "Bear Stearns S&P Index Acct #102-22776." The last indicated value of the Hilltopper securities, as of an April 9, 2001 posting by him to the Plan statement of assets, was \$2,772,215; however no value is assigned to the securities in the September 5, 2001 report prepared by independent auditors hired by the JPPSS Board.
- b. On August 3, 2000, the Respondent represented to a group of Plan participants that the assets of the Plan would be held in a brokerage account, while the majority of the securities he sold to the Plan were not held in a brokerage account.
- c. On August 3, 2000, the Respondent represented to a group of Plan participants that the mutual funds he would buy for the Plan would be no-load funds, while on September 6 and 14, 2000, he sold to the Plan Class A mutual fund shares, in the aggregate amount of \$2,500,014.00, being front-end loads. He collected commissions on these sales in the amount of \$19,000.

- d. During October 2000 and April 2001, the Respondent caused quarterly statements to be sent by mail to Plan participants. The statements reflected that subsequent payroll deductions would be invested in one or more specific proprietary mutual funds, while the subsequent payroll deductions were not invested in the specified proprietary mutual funds.
- e. On August 3, 2000, the Respondent represented to a group of Plan participants that his compensation for managing the Plan would be an annual fee equal to 30 basis points times the value of Plan assets. On that basis, his fee for the first year would have been approximately \$29,000. His actual compensation was derived from undisclosed commissions from the sale of securities and insurance to the Plan and totaled more than \$756,000 during the first year of Plan management.
- f. On August 3, 2000, the Respondent represented to a group of Plan participants that the entity which had recommended him to the Board of JPPSS had not received a fee for doing so, while he in fact paid a fee in the amount of \$160,000 to the entity.
- g. In his contract with JPPSS, the Respondent represented that he was registered under the Investment Advisers Act of 1940 while he had never been so registered.
- h. On or about May 24, 2000, the Respondent represented to members of the Board of JPPSS that he had several years experience successfully managing deferred compensation plans, yet prior to assuming responsibility for the Plan at issue, he had never served as an investment manager of a deferred compensation plan.
- i. Security No.1 could be terminated by either party upon written notice and promised a return "equivalent [to] the S&P 500 Index." Security No.2 could be terminated by mutual agreement of the parties and promised a return of eight percent per annum. In the written instrument evidencing Security No.1, Hilltopper represents that the funds will be invested in "corporate, government, government agency, municipal or other bonds or fixed income obligations, money market instruments and such other securities as [Hilltopper] many select, unless expressly limited by written directions or investment guidelines adopted by [JPPSS]. In the written evidencing Security No. 2 the payee is referred to as the "Investor." Neither Security No. 1 nor Security No. 2 was covered by FDIC insurance or subject to any other scheme of regulation

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sufficient to make regulation under the federal securities laws unnecessary. Securities No.1 and No.2 are in default. Proceeds of the sale of Securities No.1 and No.2 were co-mingled in an account owned and controlled by Hilltopper with the proceeds of securities sold to at least on other investor.

- j. In violation of NASD Conduct Rule 2110 and 2330(e), on or about May 24, 2000, August 2, and August 3, 2000, the Respondent made guarantees against losses to the Board of JPPSS and to Plan participants in connection with the proposed sale of securities to the Plan.
5. That Section 8.E(1)(j) of the Act provides, inter alia, that the registration of a salesperson or an investment advisor representative may be revoked if the Secretary of State finds that such salesperson has been suspended by any self-regulatory organization registered under the Federal 1934 Act or the Federal 1974 Act arising from any fraudulent or deceptive act or a practice in violation of any rule, regulation or standard duly promulgated by the self-regulatory organization.
6. That the NASDR is a self-regulatory organization as specified in Section 8.E(1)(j) of the Act.
7. That Section 8.E(3) of the Act provides, inter alia, that withdrawal of an application for registration or withdrawal from registration as a dealer, limited Canadian dealer, salesperson, investment adviser, or investment adviser representative becomes effective 30 days after receipt of an application to withdraw or within such shorter period of time as the Secretary of State may determine, unless any proceeding is pending under Section I I of the Act when the application is filed or a proceeding is instituted within 30 days after the application is filed. If a proceeding is pending or instituted, and withdrawal becomes effective at such time and upon such conditions as the Secretary of State by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the Secretary of State may nevertheless institute a revocation or suspension proceeding within two years after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective.

WHEREAS, by means of the Stipulation Respondent has acknowledged, without admitting or denying the averments, that the following shall be adopted as the Secretary of State's Conclusion of Law:

That by virtue of the foregoing, the Respondent's registration as a salesperson in the State of Illinois is subject to revocation pursuant to Sections 8.E(1)(j) and 8.E(3) of the Act.



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That by virtue of the foregoing, the Respondent's registration as an investment advisor representative in the State of Illinois is subject to revocation pursuant to Sections 8.E(1)(j) and 8.E(3) of the Act.

WHEREAS, by means of the Stipulation Respondent has acknowledged and agreed that his registration as a salesperson in the State of Illinois shall be revoked.

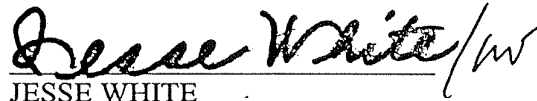
WHEREAS, by means of the Stipulation Respondent has acknowledged and agreed that his registration as an investment advisor in the State of Illinois shall be revoked.

WHEREAS, the Secretary of State, by and through his duly authorized representative, has determined that the matter related to the aforesaid formal hearing may be dismissed without further proceedings.

NOW THEREFORE IT SHALL BE AND IS HEREBY ORDERED THAT:

1. Kevin B. Dermody's registration as a salesperson and as an investment advisor in the State of Illinois shall be revoked.
2. The formal hearing scheduled on this matter is hereby dismissed without further proceedings.

ENTERED: This 2nd day of December, 2002.

  
JESSE WHITE  
Secretary of State  
State of Illinois